IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 6960 of 2007(C)

PETITIONER:

MRS.BABY ANTONY,
WIFE OF THE LATE SRI.VARKEY ANTONY,
NENMENIPARAMBIL HOUSE, EZHUPUNNA, ALAPPUZHA.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN

RESPONDENTS:
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1. COMMERCIAL TAX OFFICER,
DEPARTMENT OF COMMERCIAL TAX,
KUTHIATHODE, ALAPPUZHA DISTRICT.

2. TAHASILDAR,
TALUK OFFICE, CHERTHALA, ALAPUZHA DISTRICT.

BY G.P. SRI. C.K. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE DEATH CERTIFICATE NO. 3805/2006 DATED 25.7.2006

EXT.P2 TRUE COPY OF THE ORDER NO. A1-4892/2006-07 DATED 17.10.2006

EXT.P3 TRUE COPY OF THE RR NOTICE NO. B1-7/07/ST DATED 15.2.2007 ISSUED UNDER SECTION 7 OF THE RR ACT.

EXT.P4 TRUE COPY OF THE RR NOTICE NO. B1-19/07/ST DATED 21.2.2007 ISSUED UNDER SECTION 7 OF THE RR ACT.

EXT.P5 TRUE COPY OF THE RR NOTICE NO. B1-19/07/ST DATED 21.2.2007 ISSUED UNDER SECTION 34 OF THE RR ACT.

EXT.P6 TRUE COPY OF THE PAYMENT RECEIPT NO. 89/468 DATED 26.2.2007

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 6960 OF 2007

Dated this the 6th day of August, 2007

JUDGMENT

Petitioner is challenging Ext.P2 order whereunder first respondent has levied a penalty of Rs. 1,36,816/- being the double the amount of turnover tax payable for the month of June, 2006. The case of the petitioner is that penalty notice was issued on 20.7.2006 and on that date the proprietor of the business died. Even though filing of returns and payment of turnover tax for June, 2006 should have been done by 20th July, 2006, that is the date of death of the assessee, it would not have been possible for the assessee to file the return, if he was sick or hospitalised or otherwise unable to attend to his work. However, it is strange that tax was not paid until demand notice was issued in February, 2007 because petitioner, the legal heir, appears to have filed monthly returns from July, 2006 onwards. Full facts are not on record and since no reply was filed to the notice, the Officer has also not considered any of the facts in detail. Since petitioner has taken over the business from her husband on his death, there would have

been continuity in payment of tax and in that case I see no reason why tax for June, 2006 was not paid before remitting tax for July, 2006 onwards.

In the circumstances, I direct the petitioner to furnish detailed reply against the proposal for levy of penalty giving details of payment and tax upto the death of assessee for the Officer to reconsider the matter. I make it clear that first respondent should consider all circumstances and also payment of interest, collection charges, etc., while considering penalty afresh. First respondent is directed to pass fresh orders within two weeks from the date of production of a copy of this judgment. Petitioner should file reply to penalty notice treating Ext.P2 as a proposal along with a copy of judgment for the first respondent to hear the petitioner and pass orders afresh. Recovery proceedings will be kept in abeyance until fresh orders are issued and thereafter recovery will be continued for the revised demand if any raised.

W.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge